

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-50003

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

In the Matter of
INTERMODAL FREIGHT FORWARDING, INC.,

Bankrupt.

ROBERT J. PIEROT,

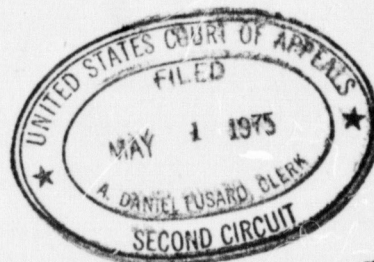
Appellant.

-----X

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

APPENDIX

FISHER, AXENFELD & BERSANI
Attorneys for Appellant
188 Montague Street
Brooklyn, New York 11201
(212) 624-0608



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Copy of Docket Entries.....	1
Order of District Court.....	3
Notice of Appeal.....	4
Transcript of First Meeting of Creditors, January 31, 1974.....	5
Order Designating Officer (A. PHILIP VISSER).....	13
Order Designating Officer (ROBERT J. PIEROT).....	15
Transcript of Adjourned First Meeting, March 6, 1974.....	17
Transcript of Adjourned First Meeting, May 17, 1974.....	22
Notice of Motion.....	26
Answer.....	32
Transcript of Hearing, May 23, 1974.....	34
Order Denying Motion.....	45
Letter, May 2, 1974.....	46
Letter, May 17, 1974.....	47
Letter, May 30, 1974.....	48
Letter, June 5, 1974.....	49
Order for Retention of Accountants.....	52

INTERNATIONAL FREIGHT FORWARDING, INC.

ADJUDICATION: 12/26/73.

ADDRESS OF BANKRUPTCY DEBTOR (Number and Street)

~~INTERNATIONAL FREIGHT FORWARDING, INC.~~

115 Madison Street

CITY New York COUNTY New York STATE NY

NO ASSET CASES ONLY
CLAIMS AS SCHEDULED

ATTORNEY FOR BANKRUPTCY DEBTOR

ATTORNEY FOR PETITIONING CREDITORS

LEITCHARD, MARCE, HENRIEN & ASSOC, 10 East 40th Street, N.Y.C. 10018, Tel. 9 RD 6-8240

RECEIVER

ATTORNEY FOR RECEIVER

TRUSTEE

ATTORNEY FOR TRUSTEE

CHANGES OF PRINCIPALS

DATE	DESCRIPTION
12/6/73	Filed Involuntary Petition in Bankruptcy. Referred to: BANKRUPTCY JUDGE HERZOG.
12/12/73	Received COPY of Verified List of Creditors. Sworn to: 12/10/73.
1/15/74	Received CERTIFIED COPY from Bankruptcy J. of ORDER of adjudication in Bankruptcy. Dated: 12/26/73.

OVER

FORM BK 74-B
SEP. 1962

BANKRUPTCY DOCKET - COPY

CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

Received from Bankruptcy J. NOTICE OF APPEAL TO District Court
from the order of Bankruptcy J. entered on 5/23/74, denying the
motion of Robert J. Pierot to vacate an ex parte order, etc. by:
Fisher, Axenfeld and Bersani, attorneys for Appellant. Dated:
6/5/74 RET: JULY 30th, 1974 at 10:30 A.M. Rm. 506. BROWN FOLDER 831

Received from Bankruptcy J. DESIGNATION of contents for
inclusion in Record on appeal (by: same as above) Dated: 6/14/74.

7/5/74 Filed BRIEF for Appellant Robert J. Pierot, that the ex parte order
of Feb. 25, 1974 should be vacated. sub. by: Fisher, Axenfeld and
Bersani, attys. for Appellant, Dated: 7/5/74. f.

7/22/74 Filed MEMORANDUM OF LAW in opposition to appeal of Robert J.
Pierot from order Dated: 5/23/74 of Bankruptcy J. HERZOG. sub. by:
Bainward, Maron, Hendler and Krause, attys. for Appellee, f.

7/25/74 Filed BRIEF IN REPLY FOR APPELLANT, ROBERT J. PIEROT, sub. by:
Fisher, Axenfeld and Bersani, attys. for appellant, Dated: 7/25/74. f.

1/8/75 Filed MEMO-ENDORSED (on back of Notice of Appeal dated: 6/20/74)
.....the order of Judge Herzog entered on 5/23/74 denying a
motion to vacate an ex parte order, entered on 2/25/74, directing
Robert J. Pierot to perform the duties of the Bankrupt pursuant to
11 U.S.C. §25(b) is hereby affirmed. JUDGE STEWART, DATED: 1/7/75.
COPY TO BANKRUPTCY JUDGE HERZOG.

2/7/75 Filed NOTICE OF APPEAL for the Second Circuit from the order
HON. CHARLES E. STEWART entered on: 1/8/75 affirming the order
of Bankruptcy J. Herzog, denying the motion of Robert J. Pierot
to vacate an ex parte order directing him to perform the
duties of the Bankrupt, etc. sub. by: Fisher, Axenfeld and Bersani,
attorneys for Robert J. Pierot, Dated: 2/7/75. mailed notices.

In re: INDIVIDUAL DEBT FOR SPENDING, INC.
7-1111

The order of Judge Hervey entered
on May 26, 1974 denying a motion to
vacate an ex parte order, entered on
February 25, 1974, directing Robert J.
Pierot to perform the duties of the
Bankrupt pursuant to 11 U.S.C. §25(b)
is hereby affirmed.

SO ORDERED

Anna E. Krasoff
U.S.D.J.

January 7, 1975

767



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
In re :
INTERMODAL FREIGHT :
FORWARDING, INC. : Bankruptcy No.
 : 73 B 1242
 : NOTICE OF APPEAL
Bankrupt :
-----X

Notice is hereby given that ROBERT J. PIEROT, hereby
appeals to the United States Court of Appeals for the
Second Circuit from the Order of the Hon. CHARLES E. STEWART,
entered January 8, 1975, affirming the order of the Hon.
ASA S. HERZOG, denying the motion of ROBERT J. PIEROT to
vacate an ex parte order directing him to perform the
duties of the Bankrupt pursuant to 11 U.S.C. 25 (b).

Dated: February 7, 1975
Brooklyn, New York

FISHER, AXENFELD & BERSANI

BY: 

Attorneys for ROBERT J. PIEROT
183 Montague Street
Brooklyn, New York 11201
(212) 624-6608

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(in Bankruptcy)

In re: Assets

INTERMODAL FREIGHT FORWARDING INC.,

Bankrupt

No. 73-B-1242

United States Court House
Foley Square, New York, N.Y.
January 31, 1974 - 10:20 A.M.

Before:

HON. ASA S. HERZOG

Referee

FIRST MEETING OF CREDITORS

Appearances:

CONRAD EBERSTEIN, Esq.,

Attorney for the Benefit of Creditors
200 Park Avenue
New York, New York

REYNOLD E. GOITLICH

Official Court Reporter
Room 204, United States Courthouse
Foley Square, New York, N.Y. 10007
REder 2-5931

P R O C E E D I N G S (Continued):

WEINSTEIN, MARON, HENDLER & KRAUSE, Esqs.
Attorneys for Participating Creditors
10 East 40th Street
New York, New York
By: ELLIOT L. KRAUSE, Esq., of Counsel

GREENBAUM, LOIFF & ERNST, Esqs.
Attorneys for Creditor
437 Madison Avenue
New York, New York
By: LEONARD WEINSTEIN, Esq., of Counsel

HERBERT SHAPIRO, Esq.
Appearing for Stamp Center Building Corp.,
Claimant
90 William Street
New York, New York

EDWARD J. WATTE, Esq.
Appearing for W.T. Grant Company

- - - - -

THE COURT: Who is here representing the bankrupt?

MR. KRAUSE: Let me see if I have any record of it.

THE COURT: Is there anybody here representing the bankrupt?

(No Response.)

THE COURT: Evidently there is nobody here representing him so all we can do today is elect a trustee.

I will take nominations for a trustee.

Mr. KRAUSE: Your Honor, I nominate Harris D. Ireland of 19 East 40th Street, New York, New York.

THE COURT: Are there any other nominations?

(No Response.)

THE COURT: Nominations are closed.

What claim do you vote?

MR. KRAUSE: I vote the claim of Harding & Heal, Inc., in the sum of \$737.60.

A SPEAKER: Your Honor, my name is Henry B. Roth of the firm of Hurdfield & Rubin, 40 Wall Street, Manhattan.

Our office represents a creditor, Our Town Airlines and we have a proof of claim and I would like to nominate a trustee.

THE COURT: The nominations were closed. You were late, and the claim has been voted.

MR. ROTH: Your Honor, we have a claim for \$34,000 and we would like to nominate a trustee.

THE COURT: I said that nominations were closed. You sat silent while I asked for nominations, and I said the nominations are closed, and they are closed.

MR. ROTH: Thank you, your Honor.

MR. WHITE: Your Honor, I appear for W.T. Grant & Co. and we came down yesterday and filed our notice

1 of claim. I am not sure of the procedure on filing.

2 THE COURT: Do you want to vote your claim?
3
4 We only have one nominee. Do you want to vote in
5 favor of that nominee?

6 MR. WAITE: Yes.

7 THE COURT: What claim do you vote?

8 MR. WAITE: We vote approximately \$133,000 in
9 claims.

10 MR. WEINSTEIN: Your Honor, may I vote my claim
11 also, the claim of Famolare, Inc. in the amount
12 of \$230,791. That claim has already been filed.

13 MR. KRAUSE: I have a copy of that claim, the
14 amount is \$230,791.56.

15 THE COURT: Even if I permitted you to vote
16 you would only have one claim, and even if I permitted
17 you to vote and you have a majority in amount, we
18 would have a split in number and amount and, therefore,
19 there would be no election and I would appoint Mr.
20 Leinwand as trustee. So it really matters very little.

21 Mr. Leinwand will be appointed trustee. The
22 claims are presented and provisionally allowed for
23 voting purposes and I fix his bond -- what sum?

24 MR. WEINSTEIN: I would like to make a report.

25 MR. KRAUSE: Your Honor, I just wanted to say

1 that Mr. Duberstein is the assignee for the
2 benefit of creditors and he can make a report at this
3 time as to the assets in the estate.

4 THE COURT: First, your Honor, I will file
5 with the Court my report.

6 THE COURT: How much have you got?

7 MR. DUBERSTEIN: We have close to \$300,000 which
8 is all subject to security liens held by the American
9 Mail Lines.
10

11 I entered into a stipulation with them at the
12 very outset of the assignment whereby they agreed
13 to allow me to collect all the accounts receivable
14 since they were spread throughout the country, and
15 we have moneys received from bank accounts, the
16 proceeds of which they claim represent collection of
17 accounts receivable. So although I have roughly
18 \$295,000 I must respectfully call it to the Court's
19 attention that it is subject to the liens.

20 THE COURT: It is cash?

21 MR. DUBERSTEIN: Yes.

22 THE COURT: I have to file a bond.

23 MR. DUBERSTEIN: I have \$295,000 which I will
24 turn over to the trustee.

25 THE COURT: I file a bond in the sum of \$300,000.

MR. KENNEDY: Your Honor, since there is no appearance on behalf of the bankrupt and there does not seem to be an officer of the bankrupt here, may I suggest that we adjourn this meeting to a date to give us an opportunity, or give the trustee an opportunity to confer with Mr. Duberstein about other aspects of the matter, obtain the funds from him and we will go forward as soon as we are in a position to do so.

THE COURT: Do you know the names of the officers of the bankrupt?

MR. DUBERSTEIN: Yes. There is a Mr. Philip Visser.

THE COURT: Are there any other officers familiar with the proceeding?

MR. DUBERSTEIN: When I get back to my office I will examine my files and I will make everything available to the trustee.

THE COURT: I designate Mr. Philip Viscer as the agent to file on behalf of the bankrupt the corporation's schedules and statement of affairs as required by the Rules.

12. BURKSTEIN: I think he was most familiar

THE COURT: And I direct that schedules be filed within ten days.

MR. KRAUSE: I was going to rise to ask whether I should enter an order on that?

THE COURT: I think that would be the smartest thing to do.

MR. KRAUSE: Because if he does not obey I can then move to punish him for contempt.

MR. DUBERSTEIN: I assume you served him with a certified copy of the order of adjudication and there is a provision in there that the schedules and statement of affairs be filed in ten days.

Practically all of this money I am telling you about has been in certificates of deposit, earning interest, your Honor. As assignee I made certain and your Honor signed some orders. We have been very close in following up on this.

Most of this money, your Honor, except for some money we just got in, which has not been deposited, has been in certificates of deposit.

I would like to have your Honor reconsider the amount of the bond of \$100,000 in light of the fact that if Mr. Reinwand deposits this money in certificates --

8
1 THE COURT: If they will submit to me an order
2 for putting the \$100,000 in certificates of deposit,
3 and the order to provide that these certificates
4 are to remain the custody of the bank and not to be
5 turned over to anyone except on my order, then I
6 will reduce his bond and I will make it \$10,000.

7
8 Is that satisfactory to the creditors?

9
10 MR. WAITE: Yes, your Honor.

11
12 MR. DUBERSTEIN: It will save a lot of money for
13 the estate.

14
15 MR. KRAUSE: I would like to ask one question:
16 When do your certificates --

17
18 MR. DUBERSTEIN: We drew them out and the money
19 has been deposited in my general account.

20
21 THE COURT: You submit that order promptly.

22
23 MR. KRAUSE: I will do that.

24
25 THE COURT: Now, do you want a date for
26 examination?

27
28 MR. KRAUSE: I think so, your Honor.

29
30 THE COURT: Off the record.

31
32 (Discussion held off the record.)

33
34 THE COURT: March 5th at eleven o'clock.

35
36 MR. KRAUSE: Thank you, your Honor.

(Adjournment taken to March 6, 1974 at 11:00 a.m.)

IN SENATE
JANUARY 31, 1974

IN SENATE

OF

INTERNATIONAL FREIGHT FORWARDING, INC.,
Bankrupt

To Whom It May
Come

ORDER DESIGNATING OFFICER
PURSUANT TO §7b OF THE
BANKRUPTCY ACT AND A RECEI-
PT FOR FILING OF SCHEDULES

A first meeting of creditors having been held before the undersigned on January 31, 1974, and the undersigned having considered, among other things, the failure of the bankrupt to file schedules of assets and liabilities and its statement of affairs, and it appearing that more than 5 days have elapsed since the date of adjudication herein, and it further appearing that the proper administration of the affairs of the bankrupt requires that schedules of assets and liabilities and a statement of affairs be filed without delay, and it appearing from the record of the proceeding before the undersigned that no officer of the bankrupt had been designated by the Court pursuant to the provisions of §7b of the Bankruptcy Act, and the Court having made a direction that schedules and a statement of affairs be filed, and that PHILIP VISSER be designated to perform the duties of the bankrupt pursuant to the provisions of §7b of the Bankruptcy Act, and sufficient reason appearing to me therefor, it is

NOW, on motion of IRVING, HARRON, HENDLER & KRAUSE,
attorneys for HARRY P. LAND, the Trustee herein,

ORDERED, that the bankrupt, by PHILIP VISSER, its
President, of 33 Montrose Road, Scarsdale, New York, prepare,
take oath to and file schedules of assets and liabilities and a

statement of affairs in the form prescribed by the United States Supreme Court as required by §76(3) of the Bankruptcy Act as amended *February 2, 1974*, and it is further

ORDERED, that *FRANK J. VISSER*, the President of the bankrupt, of 79 Madison Road, Manhattan, New York, be and he hereby is designated by the undersigned to perform the duties imposed upon the bankrupt by the provisions of §76 of the Bankruptcy Act, and it is further

ORDERED, that service be given by regular mail of a copy of this order upon INTERNAL FREIGHT FORWARDING, INC., by *FRANK VISSER*, its President, within 10 days after the entry of this order shall be deemed sufficient service thereon.

Dated: New York, N. Y.
February 2, 1974

/s/ Alex. S. Hargis
BANKRUPTCY JUDGE

CLERK OF COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

INTERNATIONAL FREIGHT FORWARDING,
INC.,

Bankrupt.

In Bankruptcy No. 73 B 1282

ORDER DESIGNATING OFFICER
PURSUANT TO §70 OF THE
BANKRUPTCY ACT AND DESIGNING
POLICE OF SCHEDULES AND
STATEMENT OF AFFAIRS

AT NEW YORK, NEW YORK, IN SAID DISTRICT, ON THE 25th DAY
OF FEBRUARY, 1974:

A first meeting of creditors having been held before the undersigned on January 31, 1974, and the undersigned having considered, among other things, the failure of the Bankrupt to file schedules of assets and liabilities and its statement of affairs, and it appearing that more than 5 days have elapsed since the date of adjudication herein, and it further appearing that the proper administration of the affairs of the Bankrupt requires that schedules of assets and liabilities and a statement of affairs be filed without delay, and it appearing that pursuant to order dated February 6, 1974, PHILIP VISSER, the President of the Bankrupt, had been designated by the Court, pursuant to the provisions of §70 of the Bankruptcy Act, to file schedules and statement of affairs in the matter herein, and PHILIP VISSER having left the country for at least 6 months and is in no position

to file said schedules and statement of affairs, it is

NOW, on motion of LEWIS, HARRIS, HENDLER & KRAUSE,
attorneys for MARCEL D. HERRMAN, the Trustee herein,

ORDERED, that the Bankrupt by ROBERT J. PIERCE
of 501 East 75th Street, New York, New York, prepare,
and doth to and file schedules of assets and liabilities
and statement of affairs in the form prescribed by the
United States Supreme Court as required by §7a (3) of the
Bankruptcy Act on or before the 20 day of March, 1974;
and it is further

ORDERED, that ROBERT J. PIERCE, the Vice-President
of the Bankrupt, of 501 East 75th Street, New York, New York,
be and he hereby is designated by the undersigned to perform
the duties imposed by the Bankrupt by the provisions of
§7a of the Bankruptcy Act; and it is further

ORDERED, that service be given by regular mail
of a copy of this order upon INTERNATIONAL FREIGHT FORWARDING,
INC., by ROBERT J. PIERCE, its Vice-President, within
ten (10) days after the entry of this order shall be
deemed sufficient service thereof.

15/ MAR 11 1974

BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(City of New York)

INTER-OCEAN FREIGHT FORWARDING INC.,

Bankrupt

No. 73-B-1242

United States Court House
Foley Square, New York, N.Y.

March 6, 1974 - 11:30 A.M.

Before:

HON. ASA S. HERZOG

Referee

ADJOURNED FIRST MEETING

Applicants:

HAROLD L. HARRIS, Esq.

100 Broadway
New York, N.Y. 10007

REINHOLD B. GUTLICH

Official Court Reporter,
100 Broadway, 10th Floor, New York, N.Y. 10007
(212) 677-1111

2

2

4

1.

—

I just want to make it clear on the record that even if Mr. Pierot is not that familiar with the business, or says that he is not, --

THE COURT: You want him to appear anyhow.

MR. LEINWAND: I want him here and I want him to file schedules, your Honor, because we have a great amount owing in this estate and there are funds in the estate, but there is a question whether they belong to a secured creditor, and we may not have funds to have an accountant even though there are a great many books and records, so we have to get the information, and if he will have to hire someone to do it, he will have to do it.

We are awaiting the assignee's final account.

THE COURT: Have you been able to serve upon him the order directing him to file schedules within a date certain?

MR. LEINWAND: Yes, and that date was ten days after the date of the service.

THE COURT: Then the next step is to move to appoint him for contempt for failure to obey that order.

MR. LEINWAND: I am not quite sure that the ten day period is --

THE COURT: If he does not file and does not get

an extension from the Court or from you to file,
then your next step is to move against him.

MR. LEINWAND: Thank you, your Honor.

THE COURT: Do you want to adjourn it now?

MR. LEINWAND: I would like to adjourn it and I
would like to do it for a period of time where it
will be reasonable so that we will have the schedules
in. I think a period of 30 days.

MR. ZAWACKI: Your Honor, we received a copy of
the order on MacLay which was forwarded to us by
Mr. Pierot's office, and as Mr. Leinwand has said,
Mr. Pierot is an officer of the corporation. He
put substantial moneys into the corporation and he has
never received any of it back. We do not know at
this point whether or not he had any dealings or
functions within the corporation.

THE COURT: That would not concern us. He is an
officer and he was a stockholder of the corporation
and if he was designated to perform the duties of the
trust, he simply will have to do them. If it takes
him a little longer we will grant him the necessary
time to do it. Counsel will not push him if it
requires some time to get the information together,
but he will have to do it.

2 Right now we will let it drop for 30 days or
3 so and give him a chance to confer with you, and if
4 you find you need more time, I am sure you will have
5 no problem with Mr. Lelawand.

6 MR. ZAWACKI: Thank you very much.

7 THE COURT: Off the record.

8 (Discussion held off the record.)

9 THE COURT: I will adjourn this to April 10th
10 at three o'clock.

11 -----
12 (Adjournment taken to April 10,
13 1974 at 3:00 o'clock p.m.)
14 -----
15
16
17
18
19
20
21

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK
In Bankruptcy

In re Matter of

INTERMODAL FREIGHT FORWARDING INC.
Bankrupt.

No. 73-B-1242

United States Court House
Foley Square, New York, N.Y.

May 17, 1974, 11:30 A.M.

Before:

HON. ASA S. HERZOG

Referee

ADJOURNED FIRST MEETING.

Appearances:

LEONARD, MARCH, WINCHER & KRAUSE, Esqs.,
Attorneys for trustee,

154 Madison Street,
New York, N.Y. 10016

By: LEONARD, MARCH, WINCHER & KRAUSE, Esq., of counsel.

BERNARD E. GUTTER
Clerk of Court
Room 210, United States Court House
Foley Square, New York, N.Y. 10007
100-10000

STEWART, JOHN W., Esq.,
Attorney at Law,
100 Broadway Street,
New York, N.Y. 10021

By: EDWARD W. S. LIN, Esq., of counsel

EDWARD W. S. LIN, Esq.,
Attorney at Law,
431 Madison Avenue,
New York, N.Y. 10022

By: EDWARD W. S. LIN, Esq., of counsel,

EDWARD WATTE, Esq.,
Attorney for W.T. Grant, creditor,
1510 Broadway,

MR. LEINWAND: If your Honor please, this was
an involuntary partition in bankruptcy which followed
an assignment for the benefit of creditors.

We appeared before your Honor, and as I under-
stand it, Mr. Fletcher was designated as the officer
who was required to file schedules in this proceeding.

My son, Harris Leinwand, has been handling
this matter and he has been after him to file the
schedules, and apparently to date he has not done so.

Has counsel been appeared. Do you want to give
any reason as to why?

MR. LEINWAND: I am conceding the validity
of the order and asking Mr. Fletcher to file
schedules.

THE COURT: All right, do you concede my authority?

1
2 to direct an officer to file schedules?

3
4 MR. ZAWACKI: Your Honor, we have made a
5 motion challenging that order which has been noticed
6 for May 23.

7
8 THE COURT: Challenging what, the designation
9 of an officer?

10
11 MR. ZAWACKI: Yes, sir, that is correct.
12 While we are willing to file schedules we are in the
13 process of trying to find somebody from the
14 bankrupt corporation who has knowledge of the affairs
15 of the corporation. Mr. Pierot, as I indicated the
16 last time, at the last creditors meeting, was merely
17 an investor. He has no knowledge of the operations
18 of the corporation and we didn't think --

19
20 THE COURT: Was he an officer?

21
22 MR. ZAWACKI: He was an officer, yes.

23
24 We did not think that any schedules filed by
25 him would be really worth anything.

26
27 THE COURT: In other words, you think you can
28 substitute your judgment for the judgment of the
29 Court.

30
31 MR. LEONARD: I might also point out, your
32 Honor, that since this case started, at the behest
33 of W. T. GALT, and Mr. Weinstein's client

On 11/11 a preliminary check was advised there were no assets at all.

THE COURT: When is the motion returnable?

MR. LEONARD: May 23d.

THE COURT: We will test this thing out very nicely.

MR. LEINWAND: I want the Court to know that in this no asset estate we already have a stipulation which will bring us \$100,000. done without schedules, with another 30 or 40 thousand that we are practically sure of, and we were told definitely there were no assets here at all.

THE COURT: In order that there be no complain
about any fairness, I will direct Mr. Pierot to file
schedules within 30 days from today -- today is the
17th of May and I will give him until June 16th,
1974 to file schedules. If he fails to do so
I direct the trustee to make appropriate application
to satisfy him for contempt of Court.

10. 11110000: Thank you, your Honor.

I stayed in Aljourn for a month.

THE COURT: July 2, 1974, at 11:30 A.M.

(1) . Case history adjourned to July 2, 1974, 11:33 AM.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of
INTERMODAL FREIGHT
FORWARDING, INC.,
Bankrupt.

:
NOTICE OF MOTION
: In Bankruptcy No.
73 B 1242
:
(HERZOG, J.)
:

-----X
SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of HAROLD L. FISHER, sworn to the 15th day of May, 1974, the ex parte order of ASA S. HERZOG, Bankruptcy Judge, entered on February 25, 1974, and all papers and proceedings heretofore had herein, the undersigned will move this Court before the HON. ASA S. HERZOG in a proceeding to be held in the United States Courthouse for the Southern District of New York, Foley Square, New York, New York, on May 23, 1974 at 10:30 in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, vacating and setting aside the ex parte order of February 25, 1974 upon the ground that the said order is void made without notice and constitutes a denial of due process to ROBERT J. PIEROT, a person affected by said order, and for such other and further relief as to this Court may seem just and proper.

Yours, etc.

FISHER, ARNOLD & BERSANI
Attorneys for Robert J. Pierot

By: Robert J. Fisher

A member of the firm
138 Montague Street
Brooklyn, New York 11201
(212) 624-0608

TO: LEINWAND, MARON, HENDLER & KRAUSE
Attorneys for the Trustee
10 E. 40th Street
New York, New York

Clerk
United States District Court
Southern District of New York
100 Wall Street
New York, New York

SAME TITLE

Affidavit

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

HAROLD L. FISHER, being duly sworn, deposes and says:

1. He is a member of the firm of Fisher, Axenfeld & Bersani, the attorneys for ROBERT J. PIEROT, and as such is fully familiar with so much of the facts and circumstances of the proceedings herein as they affect the said ROBERT J. PIEROT.

2. He makes this affidavit in support of the instant application to vacate and set aside the ex parte Order of this Court of February 25, 1974, a copy of which is annexed hereto as EXHIBIT A.

3. Upon information and belief, the instant proceeding in bankruptcy was initiated on or about December 6, 1973 by the filing with the Clerk of this Court of an involuntary petition against INTERMODAL FREIGHT FORWARDING, INC., an alleged bankrupt.

4. On or about March 1, 1974 ROBERT J. PIEROT received by mail a copy of the aforesaid Order, which directed ROBERT J. PIEROT to:

a. "prepare, make oath to and file schedules of assets and liabilities and statement of affairs" of the Bankrupt, in the form required by section 7a(8) of the Bankruptcy Act, and

4. "perform the duties imposed by (sic) the Bankrupt by the provisions of section 7b of the Bankruptcy Act."

5. Said Order further stated that service by regular mail upon the Bankrupt, by ROBERT J. PIEROT, shall be deemed sufficient service of the Order.

6. Upon information and belief, said Order was made upon the ex parte motion of the attorneys for the Trustee herein without affording ROBERT J. PIEROT any notice thereof nor a reasonable opportunity to be heard in opposition to the motion.

7. Upon information and belief, at the time when the aforesaid motion was made, heard and granted, there existed no compelling reason for not giving ROBERT J. PIEROT prior notice of the motion and a reasonable opportunity to be heard in opposition to it.

8. Although ROBERT J. PIEROT was an officer and director of the Bankrupt, he at no time participated in the day-to-day running of its corporate affairs. His interest in the Bankrupt was limited to that of a non-participating investor.

9. At all times herein, the Trustee and his attorneys knew that the affairs of the Bankrupt were managed by Messrs. A. PHILIP VISSER, W. H. FARREL, LAWRENCE R. FOLEY, DEBOTTO and GUTHAN, all of whom were officers of the Bankrupt and who were available to perform with knowledge the duties imposed on ROBERT J. PIEROT by the aforesaid Order and who were more fully qualified than ROBERT J. PIEROT to perform those duties in a manner which would reflect their day-to-day operational

knowledge of the corporate affairs of the Bankrupt.

10. Upon information and belief, the Trustee and his attorneys are using this Order to impose an undue burden on ROBERT J. PIEROT.

11. Although there was a time subsequent to the making of the aforesaid Order when ROBERT J. PIEROT was willing to cooperate with the Trustee and make whatever effort he was capable of to comply with the terms of said Order without conceding its validity (see the letters annexed hereto as EXHIBITS "B" and "C"), this office had been informed by the attorneys for the Trustee that the books and records of the Bankrupt were situated among five different offices in New York City (see the letter annexed hereto as EXHIBIT "D"). Even though the attorneys for the Trustees have advised this office on May 3, 1974 that the books and records are now located at the office of the Trustee's accountants, the lack of cooperation heretofore shown by the Trustee and his attorney belies their ostensibly valid reasons for seeking said Order.

12. More importantly, however, is the fact that even if ROBERT J. PIEROT were to prepare and file the schedules mandated by the Order, to make oath and swear to the contents of such schedules is a futile gesture on his part in light of his actual ignorance of the corporate affairs of the Bankrupt.

13. The Trustee, on the other hand, as a person who has actual access to and possession of the books and records of the Bankrupt and as a person who can be designated to perform the duties of the Bankrupt is the person who is better prepared


and more practically capable of performing those duties.

14. In view of the facts, the ex parte application for the aforesaid Order was unjustified as to ROBERT J. PIEROT.

15. The absence of notice, the lack of a hearing and the failure to accord ROBERT J. PIEROT an opportunity to be heard prior to the issuance of the Order violated every principle of due process of law.

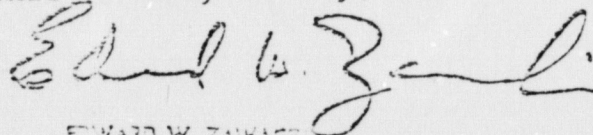
16. The Order is therefore, void and unenforceable.

WHEREFORE, it is requested that the Order of this Court, dated February 25, 1974, be vacated.



HAROLD L. FISHER

Sworn to before me
this 15th day of May, 1974



EDWARD W. ZUVACK
Notary Public, State of New York
No. 31-812121
Qualified in New York County
Commission Expires March 1, 1976

SAME TITLE

Answer of Trustee

TO THE HONORABLE ASA S. HERZOG, BANKRUPTCY JUDGE:

The answer of the Trustee, by his attorneys, LEINWAND, MARON, HENDLER & KRAUSE, to the affidavit of HAROLD L. FISHER, dated May 15, 1974, as attorney for ROBERT J. PIEROT, respectfully shows and alleges:

1. Denies that he has sufficient knowledge or information as to form a belief as to the truth of the allegations in Paragraphs "1", "2", "4", "8" and "9".

2. Denies each and every allegation in Paragraphs "6", "7", "10", "11", "12", "13", "14", "15" and "16".

FIRST AFFIRMATIVE DEFENSE

3. The notice of motion dated May 15, 1974, brought on by FISHER, ANENFELD & BERSANI, attorneys for ROBERT J. PIEROT, was annexed to the affidavit of HAROLD L. FISHER, a member of the firm of FISHER, ANENFELD & BERSANI. A notice of motion

must proceed by a petition, not an affidavit. See

Sydney v. New York Creditmen's Association, 113 F. 2d 296

and Royal Petroleum Corporation v. Smith, 127 F. 2d 841.

Dated: New York, New York
May 23, 1974,

LEINWAND, MARON, HENDLER & KRAUSE,
Attorneys for Trustee

BY: Harris D. Leinwand
HARRIS D. LEINWAND,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter

of

INTERNATIONAL FRANCHISE CORPORATION, INC.

Bankrupt.

No. 73-B-1242

United States Court House
Foley Square, New York, N.Y.

May 23, 1974, 11:30 A.M.

Before:

HON. ASA S. HERZOG

Referee

HEARING ON MOTION TO MODIFY ORDER
OF 5/17/74.

Appearances:

ROBERT A. FELD & ASSOCIATES, P.C.,
Attorneys for Plaintiff,
by ROBERT A. FELD, Esq.,
of counsel.

BEATRICE R. COTTLES
Official Court Reporter
Room 210, United States Courthouse
Foley Square, New York, N.Y. 10007
REcord: 2-3931

LEINWAND, MARON, HENDLER & KRAUSE, Esqs.,
Attorneys for Trustee,
10 East 40th Street,
New York, N.Y. 10016
By: HARRIS B. LEINWAND, Esq., of counsel.

- - - - -

MR. ZAWACKI: Your Honor, before I begin I
would like to state that Mr. Leinwand gave me a copy
of his answer just prior to entering the court-room
and I would request an opportunity to respond to it.

THE COURT: Argue the matter, please.

MR. ZAWACKI: This is a motion to vacate the
order of this Court dated February 25, 1974.
The motion was made on the ex parte application of
the trustee, and the order resulting from that
application directed Robert J. Pierot to attend a
creditors meeting and to file schedules of assets
and liabilities of the bankrupt by March 20th, 1974.

This order was made without notice to
Mr. Robert J. Pierot and he was not given any
opportunity to oppose the motion. There was no
compelling reason not to give Robert J. Pierot
notice and an opportunity to be heard in opposition.
The United States Constitution provides that no
person shall be deprived of life, liberty and
property without due process of law. This means

1 that a person must be afforded some notice of the
2 pending of legal action against him, and giving him
3 an opportunity to be heard prior to the taking of
4 such action.

5
6 No such notice and no such opportunity was
7 given to Robert J. Pierot prior to the granting of
8 the trustee's motion.

9 While we recognize that under the Bankruptcy
10 Act this Court can direct an officer of a bankrupt
11 corporation to perform the duties of the bankrupt,
12 we contend that this is not a carte blanche to
13 single out any officer to perform those duties
14 without an inquiry as to whether or not the particular
15 officer so singled out is the appropriate person to
16 perform the task of the bankrupt.

17 Had Robert Pierot been notified prior to the
18 making of the order of February 25th, he would have
19 advised this Court that although he was an officer
20 of the bankrupt he was a stranger to the day to day
21 running of the corporate affairs. He would have
22 advised the Court that there are other officers of
23 the bankrupt within the territorial jurisdiction
24 of the Court and subject to its process, or who
25 were knowledgeable of the corporate affairs, and

1 who were capable of performing the duties imposed on
2 a bankrupt.

3
4 Under the Bankruptcy Act and Rules a trustee
5 is also a person who can be directed to file
6 schedules and a statement of affairs.

7 THE COURT: What is the last thing you said?

8 MR. ZAWACKI: I said under the Bankruptcy Act
9 and Rules a trustee is also a person who can be
10 directed to file schedules and statement of affairs.

11 THE COURT: Not when there is an officer
12 around. But go ahead.

13 MR. ZAWACKI: This order has imposed an
14 impossible burden on Robert Pierot. He has no
15 knowledge of the whereabouts of the books and records
16 of the bankrupt, not to mention even the contents
17 of those books and records.

18 We were first informed by a letter dated
19 March 26th, six days after the date by which
20 schedules were to be required under the order,
21 that the books and records were scattered among
22 five separate offices in the New York area.
23 We were subsequently informed that the books and
24 records were at J.K.Lasser. We were thereafter
25 informed that Lasser did not have the books.

1
2 The burden imposed by the ex parte order, and
3 the manner in which the order was made, constitutes
4 denial of due process to Robert Pierot and does not
5 serve the ostensibly lawful purpose for which it was
6 made.

7 Therefore I respectfully request that this
8 order be vacated, and that Robert Pierot be relieved
9 from its operation and effect.

10 THE COURT: Has Robert Pierot appeared for
11 examination?

12 MR. ZAWACKI: No, he has not.

13 MR. LEINWAND: It is normal practice, your
14 Honor, to serve an ex parte order with regard to
15 the Court designating who is to file schedules for
16 a bankrupt.

17 When we appeared there was some discussion as
18 to whether or not we had a right to have Mr. Pierot
19 designated, and we extended the time --

20 THE COURT: Discussion between whom?

21 MR. LEINWAND: Between your Honor, Mr. Zawacki
22 and myself. It was understood that they were going
23 to file schedules.

24 A time was set well after March 20th, so that
25 the March 26th letter did inform them with ample

1
2 times where the books and records were.

3 THE COURT: Was this gentleman here when I
4 made the direction that he should file schedules?

5 MR. LEINWAND: Not Mr. Piorot; Mr. Zawacki
6 was here.

7 THE COURT: I made the direction orally to
8 file schedules?

9 MR. LEINWAND: As well as an order.

10 THE COURT: I know I made an order; that is
11 what he is moving to vacate. But I made it
12 orally too?

13 MR. LEINWAND: That is correct.

14 THE COURT: When did I make it, at the first
15 meeting?

16 MR. LEINWAND: At an adjournment thereof.

17 THE COURT: At an adjourned first meeting?

18 MR. LEINWAND: Yes.

19 THE COURT: Have you got a record of that?

20 MR. ZAWACKI: You reiterated that direction
21 at the last adjourned meeting, which was last week.

22 THE COURT: Wasn't that after I entered the
23 order?

24 MR. ZAWACKI: You entered a written order on
25 February 25th. Then I think at two subsequent

1 adjourned meetings you reiterated that direction.
2 And I might add, with the direction that if such
3 schedules were not filed that the trustee is to
4 apply for a contempt order.
5

6 THE COURT: Yes, I remember saying that.

7 Do you want to add anything else?

8 MR. LEINWAND: Yes, your Honor.

9 There is a statement, I believe, in the
10 affidavit, that at one point Mr. Pierot was willing
11 to file schedules herein, but that because of the
12 behavior of the trustee, or the attorney for the
13 trustee, that he did not now wish to do so.

14 I think there has been a misunderstanding.
15 We are not trying to be obstreperous in any way.
16 We are willing to make the books and records
17 available and tell him the exact location of the
18 books and records as we have done in the past.
19 I know now exactly where they are, and I told
20 Mr. Zawacki where they are. We want to give him
21 ample time. We don't want to stand in his way at all.

22 THE COURT: Where are the books and records?

23 MR. LEINWAND: J.K.Lasser has the check
24 books and the corporate records, and the payroll
25 records. They were picked up in two locations.

1
2 They did not pick up the balance of the records
3 because the order for their retention was not signed.

4 The customs files and corporate records are
5 with David Strauss & Co. Inc., and the accounts
6 receivable are with Sea-Air Consultants, Inc., at
7 276 Fifth Avenue, New York, N.Y., and the general
8 books and records are at the Cambini Storage Ware-
9 house.

10 If your Honor would prefer to have all these
11 brought to one place -- in our office we do not
12 have the room for all this -- but we could have them
13 put all in one place, or we may be able to work
14 something out with J.K. Lasser and have them retained,
15 and if so we can have them all there.

16 I spoke with Mr. Henning of that firm, and he
17 suggested that perhaps we submit an order for their
18 retention on a much smaller amount just to look into
19 and investigate what they might do here.

20 This was an enormous business with far ranging
21 activity, and I think we have to have a full state-
22 ment of its activities, and, therefore, we must
23 have schedules filed here, especially if we don't
24 have an accountant to explain what the status of
25 the corporation and its offices in nine different

1
2 cities were.

3 I just want to point out that if Mr. Pierot
4 was serious, that he does want to file these
5 schedules, I don't see any reason why he can't do
6 so now.

7 MR. ZAWACKI: First of all, Mr. Leinwand says
8 it is normal practice to make such an order ex parte.
9 The fact that it is normal practice does not
10 necessarily make it lawful practice. As a result of
11 this ex parte order Robert Pierot could be found in
12 contempt of this Court.

13 He as an officer of Intermodal was made an
14 officer primarily because of his investment in
15 Intermodal. He had invested something around 250-
16 300 thousand dollars, part of which he was given
17 shares of stock for, and part of which he was given
18 notes for.

19 He at no time participated in the corporate
20 affairs. I don't think he would know where to begin
21 when it came down to looking at the books and records.
22 We did say at one time, and we still maintain, that
23 he is willing to make whatever attempt he can, but
24 we always said that this is without conceding the
25 validity of the order.

1
2 I realize you do not have a copy of the Notice
3 of Motion, but it does state without conceding the
4 validity of that order.

5 MR. LEINWAND: The validity of that order
6 has been discussed before, and it has been pointed
7 out to you that an officer of the corporation, even
8 if not familiar with the affairs, is responsible
9 for filing schedules.

10 MR. ZAWACKI: We maintain that he should have
11 had an opportunity before that order was granted to
12 come in and oppose it.

13 MR. LEINWAND: I have nothing further to say.

14 MR. ZAWACKI: Neither do I, your Honor.

15 Thank you very much.

16 THE COURT: Inasmuch as the books and records
17 are available to Mr. Pierot, the fact that he has
18 no familiarity with it is no excuse for his not
19 obeying the order of this Court in filing schedules.

20 The Bankruptcy Act requires that schedules
21 are to be filed by the bankrupt, and if the bankrupt
22 is a corporation the only way the Act can be complied
23 with is if an officer performs that duty.

24 This Court properly designated Mr. Pierot,
25 the vice-president of the corporation, to file

1 schedules on behalf of the corporation.
2

3 Mr. Pierot is not entitled to a preliminary
4 hearing before the entry of such an order.

5 The trustee will make the books and records
6 available to Mr. Pierot so that he can prepare those
7 schedules, and the time to file those schedules will
8 be extended for a period of thirty days from this
9 date.

10 The motion to vacate the order will be denied.

11 MR. LEINWAND: Thank you, your Honor.

12 - - - - -

13 (Hearing concluded).
14
15
16
17
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22
23
24
25

SAME TITLE

Order Denying Motion

AT NEW YORK, NEW YORK, IN SAID DISTRICT, ON THE 78th
DAY OF MAY, 1974.

A hearing having come on before me on May 23, 1974, at 11:30 A.M. pursuant to a Notice of Motion, dated May 16, 1974, for an order vacating and setting aside the ex parte order of February 25th 1974 which designated ROBERT J. PIEROT to file schedules and statements of affairs in the matter herein and after hearing EDWARD W. ZIMACKI, of counsel for FISHER, AMENFIELD & BERSANI, attorneys for ROBERT J. PIEROT, in support of said motion and HARRIS D. LEINWAND, of counsel for LEINWAND, MARRON, HENDLER & KRAUSE, attorneys for the trustee in opposition to said motion, and upon due deliberation and good cause appearing to me therefor, it is

ORDERED, that said motion be denied.

[Signature]
J. J. W. W.

Bankruptcy Judge

LAW OFFICES

AND MARION BENDLER & ROSEN

ALLEN AND
WATSON
ROSENBERG
SON
FRAZER

10 EAST 40th STREET
NEW YORK, N.Y. 10018
ROSENBERG
SON
FRAZER

10 EAST 40th STREET

NEW YORK, N.Y. 10018

RECEIVED

MAY 2, 1974

MAY 3 1974

ROSENBERG & BENDLER
LAW OFFICES

Vickrey, Greenfield & Berganti, Esqs.
100 Montague Street
Brooklyn, New York 11201

Attention: Edward W. Tausch, Esq.

Re: International Bank for Reconstruction, Inc.

Gentlemen:

I wish to advise you that the books
and records of the above-named Bankrupt are with
J. K. Reiser & Company, Certified Public Accountants,
666 Fifth Avenue, New York, New York 10019, and you
may contact Mr. Walter J. Reisinger with regard to
preparing schedules in this matter.

Very truly yours,

Marion Bendler
Marion D. Bendler

cc: [illegible]

6/3
Isidor, Anenfeld & Bersani

ATTORNEYS AT LAW
100 MONMOUTH STREET
BRIDGE PLAZA, NEW YORK 1201

AREA 222-012
TELEPHONE 224-0609

COUNSEL
PAUL E. GEORGE

JOSEPH C. WATSON, JR.
NANCY GOLD
BARRY M. SHULMAN
EDWARD W. ZAWACKI
PAUL E. STANLEY

JOHN J. FISHER
JOHN J. FISHER
JOHN J. FISHER
JOHN J. FISHER
JOHN J. FISHER
JOHN J. FISHER
JOHN J. FISHER

May 17, 1974

Harris D. Leinwand, Esq.
Leinwand, Maron, Handler
& Krause
10 East 40th Street
New York, New York 10016

Re: Intermodal Freight
Forwarding, Inc.

Dear Sir:

Reference is made to your letter of May 2, 1974 in which you stated that the books and records of the above-named Bankrupt are in the possession of J. K. Lasser & Company, Certified Public Accountants.

Isidor Leinwand has this date informed me that Lasser does not have any of the books and records of Intermodal.

I request that you advise the exact whereabouts of all of the books and records of Intermodal Freight Forwarding, Inc., who has possession of them and when and where all of the books and records can be made available for examination in New York. This request is without conceding the validity of the order of February 25, 1974.

Judge Herzog has, despite our motion, directed that schedules and statements be filed by June 16, 1974 and unless all of the books and records are made available in one place to be examined, compliance with that direction cannot be had.

Very truly yours,

FISHER, ANENFELD & BERSANI

By: Edward W. Zawacki

cc: Hon. Asa S. Herzog

[illegible]

10 EAST 40th STREET
NEW YORK, N.Y. 10018

12121 695-8040

May 30, 1974

Bureau, American Bar Association, 1900.
 The National Bar Association
 Brooklyn, N.Y. 11201

RE: INTERMODAL FREIGHT FORWARDING, INC.

Gentlemen:

I enclose herewith copy of order dated May 28, 1974.

It is my sincere hope that Robert J. Pierot will file the schedules and as I have said, I am willing to cooperate with him. I am sorry if for any reason you have been led to believe that I wish to harass him or do not wish to cooperate with him.

Very truly yours,

Harris D. Leinwand

ADL:JM
Enc.

John A. Laffer & Pierot

ATTORNEYS AT LAW
188 MONMOUTH STREET
BROOKLYN, NEW YORK 11201

AREA CODE 212
TELEPHONE 624-0603

June 5, 1974

COUNSEL
PAUL E. GEORGE

JOSEPH E. WATT, JR.
MARC I. GOLD
BARRY M. SHULMAN
EDWARD W. ZAWACKI
PAUL E. SCANLAN

HARRIS D. LEINWAND
LEINWAND, MARON, HANDLER
& KRAUSE, ESQs.
10 EAST 40TH STREET
NEW YORK, NEW YORK 10016

Re: Intermodal Freight
Forwarding, Inc.

Dear Sir:

Reference is made to your letter of May 30, 1974.

I have no doubt that you are not attempting to deliberately "harass" our client, Robert J. Pierot, but what has happened here, with respect to the Order of February 25th, has the same effect.

On March 14, 1974, I wrote you that our client had employed somebody to examine the books without conceding the validity of the Order, etc., and I asked you to advise when the books and records might be examined and where. I advised you that until the books and records were made available, our client could not comply with the Order "on or before the 20th of March, 1974".

Despite the fact that Pierot was, by the Order, required to comply on or before March 20, 1974, you did not write to me until March 26, 1974 and in that letter, you said that the books and records were in five different places spread over places in Brooklyn, Manhattan and Jackson Heights, Queens.

Thereafter, a different timetable was made orally on May 17, 1974 when the Judge directed Pierot to comply by June 16, 1974, since changed to another date.

But prior to that, and on May 2, 1974, you wrote me that the books and records of the bankrupt were with J.K. Lasser & Co.

June 5, 1974

On May 17, 1974, when the Judge made the other timetable, as above stated, we ascertained from Isidor E. Lelwand, that the books and records of the bankrupt were not in the possession of J.K. Lasser & Co., and I again requested that you advise me as to the whereabouts of the books and records.

On May 23, 1974, when our motion to vacate the Order of February 23, 1974 was returnable and argued, you disclosed despite your letter of May 2, 1974, that some books were with J.K. Lasser & Co., and that some books were with others. You recognized that these books would have to be in one place. I am sure you will agree that otherwise examination would be impossible.

In addition, when the assignee filed his schedules, his Schedule I indicated that the books and records were not only in five different places in the city, but in eight other cities as well.

We have gotten Larry Foley, who was employed by Intermodal and who was, I think, an officer, to cooperate with us, and he told us that he is willing to help in preparing schedules and a statement of affairs, but that it is not possible to do the same, unless the books and records are in one place. He told me he would need the books and records of the branches of the corporation, which were located in other cities and, very frankly, I didn't understand what he was talking about when he said "branches", but now that I have Schedule I, I understand it.

Mr. Foley is employed. Mr. Foley has agreed to set aside nights, and Saturdays if necessary, to cull from the books and records, information which will be helpful to prepare a statement of affairs and schedules, etc.

I would suggest that (a) as you stated on May 23, 1974, that all the books or at least the books that are in the City of New York be brought to one place; (b) that they be made available to Mr. Foley for as many evenings and/or Saturdays as may be necessary; and (c) adequate time be provided to do the foregoing and to prepare the statement of affairs, etc.

Our position has always been as is set forth in our letter of March 14, 1974, that without conceding the validity of the Order dated February 23, 1974 and that while we

Harris D. Leinwand, Esq. -3-

June 5, 1974

were willing to cooperate, we were not waiving any rights Robert Pierot had.

So that there be no misunderstanding, and if, as you say in your letter of May 30, 1974, that you are "willing to cooperate with him", I suggest that the foregoing be arranged and that since it is without prejudice to our right to claim the invalidity of the Order, we are hereby enclosing a Notice of Appeal from the Order you sent me with your letter of May 30, 1974.

Notwithstanding the processing of such an appeal, and without waiving any rights, my client is willing to cooperate with you and with the Court, but, I suggest that cooperation is a two way road.

Very truly yours,

HAROLD L. FISHER

HLF:jk
Encl:

cc: Hon. Asa S. Herzog

cc: *Asa S. Herzog*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter

-of-

INTERMODAL FREIGHT FORWARDING, INC.

Bankrupt.

:
: In Bankruptcy
: No. 73 B 1242

: ORDER FOR RETENTION
: OF ACCOUNTANTS BY
: TRUSTEE

-----X

AT NEW YORK, NEW YORK, IN SAID DISTRICT, ON THE 1ST DAY OF
OCTOBER, 1974:

UPON the annexed application of the Trustee
herein, and the affidavit of WALTER J. HENNING, it is

NOW, on motion of LEINWALD, MARON, HENDLER &
KRAUSE, attorneys for the Trustee.

ORDERED, that the Trustee be and he hereby is
authorized and empowered to retain J.K. LASSER & COMPANY,
Certified Public Accountants, to perform the accounting
services set forth in the annexed affidavit at a rate of
compensation not to exceed \$10,000.00, plus all reasonable
and necessary out-of-pocket disbursements, such compensation
to be fixed upon proper application therefor.

/s/ ASA S. HERZOG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter :

-of- :

APPLICATION

INTERMODAL FREIGHT FORWARDING, INC., :

Bankrupt. :

-----X

TO THE HONORABLE ASA S. HERZOG, BANKRUPTCY JUDGE:

The application of HARRIS D. LEINWAND, the Trustee herein, respectfully shows and alleges:

1. That he is the Trustee herein, having duly qualified by the filing of his bond, and is now acting as such Trustee.
2. That your applicant desires to retain J.K. LASSER & COMPANY, of 666 Fifth Avenue, New York, New York, as his accountants in this proceeding at a rate of compensation not to exceed the sum of \$10,000.00.
3. It will be necessary for the following services to be performed by said accountants as accountants for the Trustee:
 - a. Summarize the books of account and post the general ledger in order to close the books for the period up to the date of the filing of the petition.
 - b. Prepare schedule of accounts payable.
 - c. Prepare schedule of accounts receivable.
 - d. Prepare financial statements, including a balance sheet, statement of income or loss, and statement of affairs, as of the date of the filing of the petition.

- e. Examine into the transactions of the corporation for the four months preceding the petition filing date to determine the existence of any possible preferences.
- f. Review the claims filed by the various taxing authorities in order to determine the propriety and accuracy of said claims, including attendance at meetings with representatives of these agencies where necessary.
- g. Attendance at meetings with the Trustee in Bankruptcy.
- h. Examine the ledgers and journals and prepare analyses of all significant balance sheet, income and expense accounts.
- i. Examine the corporate minutes, resolutions, and stock records of the bankrupt in order to determine its corporate history and ownership and the existence and pertinent provisions of any significant contractual arrangements.
- j. Review the financial history of the bankrupt to determine the existence and extent of any possible tax refund claims.
- k. Any and all such other services which petitioner and his firm will be required to render in order that a complete and proper understanding of the debtor's affairs may be obtained and presented.

4. There is presently approximately \$200,000 in the estate herein. Officers of the bankrupt have failed and refused to file schedules. Applicant has obtained an order requiring Robert J. Pierot to file schedules and said order has been taken on appeal. A decision on said appeal has not been made. The bankrupt carried on an enormous business at nine different locations and an accountant is required to examine into the conduct of this business, especially where the officers of the bankrupt have not coop-

erated.

5. Your applicant has chosen said J.K. LASSER & COMPANY as his accountants because he knows them to be competent and qualified to act in these proceedings. That said accountants have no connection with the bankrupt or the bankrupt's attorneys.

6. That, as per the annexed affidavit, said accountants estimate that their services are reasonably worth the sum of \$10,000.00.

WHEREFORE, your applicant prays for the annexed order authorizing the retention of J.K. LASSER & COMPANY at a maximum of \$10,000.00.

Dated: New York, New York
September 30, 1974

LEINWAND, MARON, HENDLER & KRAUSE,
Attorneys for Trustee

BY: _____
Partner